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BAY AREA PAINTERS AND TAPERS
7 PENSION FUND, et al.

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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12

13 BAY AREA PAINTERS AND TAPERS
PENSION FUND, et al.,

14 Plaintiffs,

15 v.

16 CRYSTAL NICOLE THOMAS, individually
17 and dba CALIFORNIA PROFESSIONAL
PAINTING,

18 Defendants.
19

Case No.: C07-3344 PJH

**REQUEST FOR NOTICE AS TO SERVICE
OF SUMMONS;**

OR, ALTERNATIVELY,

**REQUEST FOR ORDER FOR
PUBLICATION OF SUMMONS**

20
21 Plaintiffs have had great difficulty personally serving the defendant herein with the
22 Summons and Complaint in this action. It appears that the defendant is either using a false
23 address, or intentionally evading service. Regardless, it is abundantly clear that defendant has
24 received (and acknowledged her receipt) of the Summons, Complaint and related documents.
25 Plaintiffs therefore respectfully request that the Court find that the defendant has constructive
26 notice of this Action, and therefore proper service has been affected.
27
28

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REQUEST FOR NOTICE AS TO SERVICE OF SUMMONS
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Alternatively, if the Court finds that proper service has not occurred, Plaintiffs request that the Court allow Service by Publication.

SERVICE ON DEFENDANTS AT 9 LOIS LANE, SAN FRANCISCO, CALIFORNIA

Since the filing of this action on June 26, 2007, plaintiffs have made fourteen attempts to serve defendants (see Declaration of Paul Holt, filed herewith), itemized as follows:

		Date of Attempted Service	Time	Address
1.	6/29/07	Fri.	4:58 pm	9 Lois Lane, San Francisco, CA
2.	7/3/07	Tues.	8:15 am	9 Lois Lane, San Francisco, CA
3.	7/8/07	Sun.	3:40 pm	9 Lois Lane, San Francisco, CA
4.	7/14/07	Sat.	8:04 am	9 Lois Lane, San Francisco, CA
5.	7/17/07	Wed.	9:53 am	9 Lois Lane, San Francisco, CA
6.	7/20/07	Fri.	9:19 am	4134 Brookdale Ave., Oakland, CA
7.	7/20/07	Fri.	10:00 am	1110 Franklin St., Oakland, CA
8.	7/20/07	Fri.	1:25 pm	110 Mendell, San Francisco, CA
9.	7/24/07	Tues.	11:15 am	1110 Franklin St., Oakland, CA
10.	7/25/07	Wed.	2:00 pm	110 Mendell St., San Francisco, CA
11.	7/26/07	Thurs.	11:44 am	4134 Brookdale Ave., Oakland, CA
12.	9/7/07	Fri.	1:49 pm	531 Pennsylvania Ave., San Francisco, CA
13.	9/8/07	Sat.	9:20 am	9 Lois Lane, San Francisco, CA
14.	9/10/07	Mon.	3:00 pm	9 Lois Lane, San Francisco, CA

Plaintiffs have tried several addresses that “possibly” could be used by defendant, primarily using the “**9 Lois Lane**” address in San Francisco, California. Relative to the “**9 Lois Lane**” address, it has been and continues to be the address primarily used by the defendants herein. For example, the Lois Lane address is included as the “letterhead” in letters from defendant. One such letter is attached hereto as Exhibit A. Exhibit A is a true and accurate copy

1 of a letter (redacted) from Roger Breedy, Chief Executive Officer of California Professional
2 Painting, dated June 5, 2007, showing the 9 Lois Lane, San Francisco, California, address.

3 In addition, **9 Lois Lane, San Francisco, California** is also the address listed on the
4 California Contractors State Licensing Board website. A true and accurate copy of a printout from
5 the California State Licensing Board website is attached hereto as Exhibit B.

6
7 Finally, **9 Lois Lane, San Francisco, California** is the address that was provided to
8 District Council 16 when Ms. Thomas / California Professional Painting became signatory to the
9 Collective Bargaining Agreement that is at issue.

10 **DEFENDANT IS AWARE OF THE ACTION FILED AGAINST HER / IT AND HAS**
11 **RECEIVED ALL OF THE DOCUMENTS REQUIRED**

12 The **9 Lois Lane, San Francisco, California**, address wherein service was attempted on
13 multiple occasions is listed on all correspondence from Crystal N. Thomas/California Professional
14 Painting (the specific defendants herein) to plaintiffs' counsel. As Ms. Thomas is the individual
15 named in this action, the focus for purposes of service has been on this address, although other
16 addresses were also tried when personal service became difficult. (See Below)

17
18 Ms. Thomas had advised that she would be unable to pay the amount due in one lump sum
19 payment. As a means of resolution, plaintiffs offered a Judgment Pursuant to Stipulation,
20 providing for a monthly payment plan. The Judgment included "Notice and Acknowledgement"
21 language as personal service of the Complaint would increase the fees and costs incurred herein.
22 The title of the document sent was "Notice and Acknowledgement and Judgment Pursuant to
23 Stipulation. The second paragraph of the Judgment Pursuant to Stipulation sent to Ms. Thomas
24 was as follows:

25
26 *Crystal Nicole Thomas, Owner and CEO of California Professional Painting, hereby*
27 *acknowledges that she is authorized to receive service and has received the following documents*

1 *in this action: Summons; Complaint; Dispute Resolution Procedures in the Northern District of*
2 *California; Order Setting Initial Case Management Conference; Standing Order; Notice of*
3 *Availability of Magistrate Judge to Exercise Jurisdiction; Instructions for Completion of ADR*
4 *Forms Regarding Selection of ADR Process; Stipulation and [Proposed] Order Selecting ADR*
5 *Process; Notice of Need for ADR Phone Conference; ADR Certification by Parties and Counsel;*
6 *ECF Registration Information Handout; Welcome to the U.S. District Court, San Francisco.*

8 The letter sent with the documents was dated July 27, 2007. A true and accurate copy of
9 the letter enclosed therewith (redacted) is attached hereto as Exhibit C. The letter clearly confirms
10 that all of the above documents were included in the package. A true and accurate copy of the list
11 of documents served, in addition to the Notice of Acknowledgement [of Service of Summons] and
12 Judgment Pursuant to Stipulation, which were sent to defendants with plaintiffs' July 27, 2007
13 letter, is attached hereto as Exhibit D.

15 The letter and related documents were sent by both certified mail, return receipt requested
16 and by regular U.S. Mail. The certified mail was returned, marked as "unclaimed." The package
17 served by regular mail was not returned. Also on July 27, 2007, plaintiffs faxed a copy of the
18 Stipulated Judgment to defendants, referring to the full package of documents mailed that day. The
19 fax number to which this fax was sent is the fax number shown on defendant's letterhead (See
20 Exhibits A, G). A true and accurate copy of that fax (redacted), including the transmittal
21 verification report, is attached hereto as Exhibit E.

23 Attached hereto as Exhibit F is a true and accurate copy of a post-it note in the handwriting
24 of Muriel B. Kaplan of this firm, noting the contents of a telephone message from defendant
25 Crystal Thomas on August 1, 2007, inferring receipt of plaintiffs' July 27, 2007 correspondence in
26 stating that she "Will respond by Mon. 8/6 after atty consultation."

27 ///

28

1 Ms. Thomas did respond to plaintiffs. In Ms. Thomas' August 6, 2007 letter to Muriel
2 Kaplan of Saltzman and Johnson, Ms. Thomas acknowledged that she had received the
3 document(s). A true and accurate copy of her letter is attached hereto as Exhibit G and is
4 incorporated herein by this reference.

5 Defendants thereby acknowledged having received the packet of documents included with
6 plaintiffs' letter dated July 27, 2007, *including the Summons and Complaint*.

7
8 Defendants further confirmed receipt of all of the documents in faxed correspondence to
9 plaintiffs dated August 15, 2007, enclosing their own version of the Stipulation, which was
10 ultimately not acceptable to plaintiffs.

11 Accordingly, despite the fact that Ms. Thomas has not been personally served, she has
12 received and accepted all of the required documents herein. Plaintiffs therefore request that the
13 Court find that Ms. Thomas has constructive notice of this action and the claims against her and
14 California Professional Painting and that service was therefore proper.

15
16 **PLAINTIFFS ALSO TRIED TO SERVE MS. THOMAS AT SEVERAL OTHER**
17 **LOCATIONS**

18 **4134 Brookdale Avenue, Oakland, California**, is the address listed on the letterhead of
19 an undated letter from Roger Breedy, Chief Executive Officer of California Professional Painting.
20 The letterhead lists the name of Max Lear, Office Manager of California Professional Painting,
21 and it is believed that this is the address from which Max Lear works. A true and accurate copy of
22 Roger Breedy's letter (redacted) is attached hereto as Exhibit H. Service was attempted at this
23 location on two occasions.

24 **1110 Franklin, Oakland, California**, is the address listed on the letterhead of
25 correspondence from Roger Breedy, of California Professional Painting which was received by
26 plaintiffs' counsel on May 11, 2007. The letterhead lists the name of Roger Breedy, Chief
27

1 Executive Officer, and it is believed that this is an address from which Roger Breedy works. A
2 true and accurate copy of Roger Breedy's letter (redacted) is attached hereto as Exhibit I. Service
3 was attempted at this location on two occasions.

4 **110 Mendell, San Francisco, California:** James Ruigomez, a business agent for District
5 Council 16, he had attended a meeting with Roger Breedy (CEO of California Professional
6 Painting) at this location. Accordingly, plaintiffs attempted service at this address as well.
7 Service was attempted at this location on two occasions.

8 **531 Pennsylvania Ave., San Francisco, California,** is an address found as a result of an
9 online address search. This turned out to be an old address at which defendant Crystal Nicole
10 Thomas no longer resided. Service was attempted at this location on one occasion. The process
11 server was advised by the occupant that Ms. Thomas no longer resided there.

12
13 Plaintiffs informed defendants and Roger Breedy during the course of telephone
14 conversations on several occasions of plaintiffs' attempts to affect service of the Summons,
15 Complaint and related documents. Notwithstanding such conversations, defendants have
16 intentionally continued to hide from the process server in order to avoid personal service of
17 Summons.

18
19 Plaintiffs therefore respectfully request that the Court deem that reasonable diligence has
20 been made in the attempt to affect personal service of Summons on defendants, and that
21 defendants Crystal Nicole Thomas and California Professional Painting have been effectively and
22 properly served by fax and mail based upon their own acknowledgment.

23
24 **IF THE COURT CONCLUDES THAT DEFENDANTS HAVE NOT BEEN SERVED,
25 SERVICE BY PUBLICATION SHOULD BE PERMITTED**

26 In the alternative, plaintiffs request that the Court issue an Order pursuant to C.C.P. §
27 415.50 to permit service by publication in the San Francisco Chronicle or other newspaper that the
28

1 Court may deem proper.

2 Further attempts to serve defendants at the above addresses will surely be futile.

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I declare under penalty of perjury that I am the attorney for the plaintiffs in the above entitled action, and that the foregoing is true of my own knowledge.

7

Executed this 27th day of September, 2007, at San Francisco, California.

8

SALTZMAN & JOHNSON LAW CORPORATION

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10 By: _____/s/_____
Michele R. Stafford
11 Attorneys for Plaintiffs

12 IT IS SO ORDERED.

13

14 The Summons in this matter is deemed to have been effectively and properly served upon
15 defendants Crystal Nicole Thomas and California Professional Painting. The defendants'
responsive pleadings are due to be filed no later than _____.

16

17 Date: _____

THE HONORABLE PHYLLIS J. HAMILTON
UNITED STATES DISTRICT COURT JUDGE

18

19 **OR, ALTERNATIVELY**

20

21 IT IS SO ORDERED.

22

23 Service of the Summons in this action against defendants Crystal Nicole Thomas and
24 California Professional Painting be published in _____,
25 which is most likely to give actual notice to the party to be served. Publication is to be made at
least once a week for four successive weeks. A copy of the summons, complaint and the order for
publication is to be mailed forthwith to the party if his or her address is ascertained before
expiration of the time prescribed for publication of the summons.

26

27 Date: _____

THE HONORABLE PHYLLIS J. HAMILTON
UNITED STATES DISTRICT COURT JUDGE

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REQUEST FOR NOTICE AS TO SERVICE OF SUMMONS
Case No.: C07-3344 PJH

PROOF OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States and am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to this action. My business address is 120 Howard Street, Suite 520, San Francisco, California 94105.

On September 28, 2007, I served the following documents:

**REQUEST FOR NOTICE AS TO SERVICE OF SUMMONS;
OR, ALTERNATIVELY,
REQUEST FOR ORDER FOR PUBLICATION OF SUMMONS**

on the interested parties in said action by placing a true and exact copy of each document in a sealed envelope with postage thereon fully prepaid, in a United States Post Office box in San Francisco, California, addressed as follows:

**Crystal Nicole Thomas
California Professional Painting
9 Lois Lane
San Francisco, California**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 28th day of September, 2007, at San Francisco, California.

_____/s/_____
Vanessa de Fábrega